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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,723	03/20/2001	James A. Laugharn JR.	CVRS-P02-001	2606

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EXAMINER
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SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/812,723

Applicant(s)

LAUGHARN ET AL.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 18 January 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 38, 40, 43, 45, 47, 51, 54, 63, 68, 113-115, 118, 120, 122, 126, 129, 137, 142, 151 and 152 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All. b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims pending in the application are 38,40,43,45,47,51,54,63,68,113-115,118,120,122,126,129,137,142,151 and 152.

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### DETAILED ACTION

Pending claims are 38, 40, 43, 45, 47, 51, 54, 63, 68, 113-115, 118, 120, 122, 126, 129, 137, 142, 151-152.

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 38, 40, 43, 45, 47, 51, 54, 63, 68, 113-115, 118, 120, 122, 126, 129, 137, 142, and 151-152 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19, and 25 and in view of claim 1 of U.S. Patent No. 6,719,449. Although the conflicting claims are not identical, they are not patentably distinct from each other because method of claim 19 as modified by the operation of the apparatus of claim 1. Claim 19 encompasses the method of the instant claims of the application including the steps of a generation and provision of a sonic energy converging to a focal zone of a diameter of less than 2 cm, selectively directing an acoustic field by exposing the sonic energy to the sample through a medium fluid to produce a predetermined desired result. The method claim of the patent falls short of

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pointing out a nucleation feature located proximate the sample, for example the vessel holding the sample in which the sonic energy is directed to cause an motion to the fluid proximate the sample and the sample itself. In view of Claim 1, the claim describes that the apparatus has a reaction vessel and a focus is moved to be located to produce a desired result however, in understanding "a desired result" defined by the scope of claim 1, and 19, the specification describes that in operation, a nucleation feature upon the vessel such as a crack, crevice may cause bubbles, column 23, lines 28-33, and lines 5-8; column 46, lines 44-50; column 52, lines 34-38, and to a degree may be advantageous, column 23, lines 5-8. Accordingly, in light of the operation of claim 1, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the method claims of the patent '499 with an additional step of controlling the location and intensity of the sonic energy to energize a nucleation feature located proximate the sample, for example the vessel holding the sample in which the sonic energy is directed to cause an motion to the fluid proximate the sample and the sample itself.

### ***Conclusion***


3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boucher 3837805, Ranney 4571087, Martner 3292910, Janzen et al 3807704, Han et al 6699711, Watari et al 6737021, Sakuta et al 5803099, Loomis et al 1734975, Miyake et al 5736100. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose

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telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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